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Fabricators Pension Trust Fund*

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

\* \* \* \* \*

BOARD OF TRUSTEES OF THE  
SOUTHERN NEVADA GLAZIERS AND  
FABRICATORS PENSION TRUST  
FUND,

Plaintiff,

vs.

HIGHLAND GLASS, LLC., a Washington  
limited liability company; DARREN  
BURT, an individual; AMERICAN  
CONTRACTORS INDEMNITY  
COMPANY, a California corporation;  
JOHN DOES I-XX, inclusive; and ROE  
ENTITIES I-XX, inclusive,

Defendants.

CASE NO.:

**COMPLAINT FOR BREACH OF  
CONTRACT, VIOLATION OF  
ERISA, BREACH OF FIDUCIARY  
DUTY AND DEMAND FOR RELIEF  
ON BOND**

Date: N/A  
Time: N/A

The Plaintiff, the Board of Trustees of the Southern Nevada Glaziers and Fabricators Pension Trust Fund (“Plaintiff” or “Trust Fund”), acting by and through its attorneys, Christensen James & Martin, Chtd., hereby complains, asserts and alleges as follows:

**JURISDICTION & VENUE**

1. This Court has jurisdiction of this case pursuant to Section 502(e)(1) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1132(e)(1), which grants the United States District Courts exclusive jurisdiction over civil

actions brought by a fiduciary pursuant to Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), to redress violations or enforce the terms of ERISA or an employee benefit plan governed by ERISA. Such jurisdiction exists without respect to the amount in controversy or the citizenship of the parties, as provided in Section 502(f) of ERISA, 29 U.S.C. § 1132(f).

2. This Court has jurisdiction of this case pursuant to Section 301(a) of the Labor Management Relations Act of 1947, as amended (“LMRA”), 29 U.S.C. § 185(a), which grants the United States District Courts original jurisdiction over suits for violation of contracts between an employer and labor organization in an industry affecting commerce, without respect to the amount in controversy or the citizenship of the parties.

3. To the extent this Complaint sets forth any state law claims, this Court has supplemental jurisdiction over those claims pursuant to 28 U.S.C. § 1367(a).

4. Venue is proper in this Court pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2), and Section 301(a) of the LMRA, 29 U.S.C. § 185(a), in that this is the Judicial District in which the Plaintiff is administered.

### **PARTIES**

5. The Trust Fund is an express trust created pursuant to a written declaration of trust; namely, the Agreement Establishing Plan for the Southern Nevada Glaziers and Fabricators Pension Trust Fund (“Trust Agreement”), consistent with § 302(c) of the LRMA [29 U.S.C. § 186(c)], existing “to implement a Section 401 (k) retirement plan ... for the benefit of all [covered employees],” within the meaning of ERISA, 29 U.S.C. §1002(37), (2) and (3).

6. The Board of Trustees and the individual Trustees of the Trust Fund are “named fiduciar[ies],” “plan administrator[s]” and “plan sponsor[s]” and each is an individual “fiduciary,” within the meaning of 29 U.S.C. §§1102(a), 1002(16), & (21), with respect to collection of contributions due to the Trust Fund and related matters.

7. Defendant Highland Glass, LLC. (“Highland”) is and/or was a Washington limited liability company doing business as a contractor and employer in California.

1           8. Defendant Highland is an employer in an industry affecting commerce within  
2 the meaning of 29 U.S.C. §§ 152(2), (6) and (7), 1002(5), (11) and (12).

3           9. Defendant Darren Burt (“Burt”) is a natural person and individual believed to  
4 be residing in Washington and is listed in the Washington State Department of Labor &  
5 Industries’ records as the principal/governing person of Highland.

6           10. Burt is the primary manager, officer, director, owner, member, principal  
7 and/or key employee of Highland.

8           11. At all times material herein, Burt has been a member, manager, officer,  
9 director, owner, shareholder, agent and/or individual whose employment duties with  
10 Highland required decision making regarding the operations of Highland, procurement and  
11 negotiation of contracts, hiring/firing of work force, directing labor relations, project  
12 management, keeping corporate records and company books, managing financial affairs,  
13 payment of expenses and accounts payable, tracking employee hours, preparing and  
14 processing payroll and remitting reports, contributions and payments to the Trust Fund for  
15 each hour of covered labor performed.

16           12. Burt has caused Highland employees to perform covered labor requiring  
17 employer contributions to the Trust Fund on account of such work. On prior occasions, Burt  
18 submitted or caused to be submitted monthly contribution reports to the Trust Fund reporting  
19 hours of covered labor performed by Highland’s employees. Nevertheless, Burt has  
20 intentionally declined to submit certain payments to the Trust Fund for employee fringe  
21 benefit contributions owed for work performed by Highland’s employees.

22           13. The amounts that Highland was required to remit to the Trust Fund for  
23 contributions became assets of the Plaintiff on the date they became due. Burt made  
24 decisions regarding the disposition of these trust assets, including the decision not to remit  
25 payment of the contributions to the Trust Fund, and was a fiduciary to the Trust Fund with a  
26 duty to ensure that the contributions were properly and timely remitted to the Trust Fund.

27           14. Defendant American Contractors Indemnity Company (“ACIC”) is a  
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1 California corporation acting as a surety in the State of California that issued Surety Bond  
2 No. 100349916 to Highland (“Bond”).

3 15. The true names and capacities, whether partnership, individual, corporate,  
4 company, associate or otherwise of John Does I-X, inclusive, and Roe Corporations I-X,  
5 inclusive, are unknown to the Plaintiff at this time and said Defendants are therefore sued by  
6 fictitious names. The Plaintiff reserves the right to amend the Complaint to insert additional  
7 charging allegations, together with the true identities and capacities, when the same have  
8 been ascertained.

9 **GENERAL ALLEGATIONS**

10 16. At all times material herein, the International Union of Painters and Allied  
11 Trades, District Council 36, Glaziers, Architectural Metal and Glassworkers Local Union 636  
12 (“Union”) has been a labor organization representing employees in the construction industry  
13 in Southern California. The Union is an employee organization or labor organization in an  
14 industry affecting commerce within the meaning of 29 U.S.C. §§ 152(5), (6) and (7),  
15 1002(4), (11) and (12).

16 17. On or around June 2, 2017, Highland entered into that certain Participation  
17 Agreement, Glaziers, Architectural Metal & Glass Workers L.U. 636 – District Council 36,  
18 Project Stabilization Agreement / Project Labor Agreement (All Trusts) (“Participation  
19 Agreement”) with the Union, thereby binding Highland to the terms and conditions of that  
20 certain Master Labor Agreement dated June 1, 2017 – May 31, 2020 (“MLA”) (Participation  
21 Agreement and MLA collectively referred to herein as “Labor Agreement”) for the project  
22 identified as the “APEX II” project located at 700 West 9th Street in California.

23 18. The Labor Agreement has not been terminated and remains in full force and  
24 effect.

25 19. By executing the Labor Agreement, Highland also agreed to be bound by the  
26 terms and provisions of the Trust Agreement utilized to create the Trust Fund and other  
27 documents governing the Plaintiff.  
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1           20.     At all times material herein, Highland was obligated by the terms of the Labor  
2 Agreement and Trust Agreement to submit written reports to the Plaintiff on a timely basis  
3 showing the identities of employees performing work covered by the Labor Agreement, and  
4 the number of hours worked by or paid to these employees. Further, Highland promised that  
5 it would pay fringe benefit contributions to the Plaintiff on a monthly basis and at specified  
6 rates for each hour worked by or paid to its employees for performance of labor covered by  
7 the Labor Agreement. At all times material herein, Highland was obligated to submit said  
8 monthly reports and pay said contributions to the Plaintiff at their administrative offices on or  
9 before the twentieth (20th) day of the month following the month in which the labor was  
10 performed.

11           21.     As a result of the report and contribution obligations imposed therein, the  
12 Trust Fund is an intended beneficiary of the Labor Agreement.

13           22.     Employer contributions are considered fund assets from the date they are due  
14 pursuant to the written terms of the Trust Agreement, whether or not they are actually paid,  
15 and must be held in trust by an employer until remitted to the Trust Fund. Employer  
16 contributions are components of the employees' compensation and do not belong to the  
17 employer. Employers have a fiduciary duty to ensure that employer contributions are  
18 properly and timely delivered to the Trust Fund.

19           23.     Signatory employers are required to submit monthly remittance reports to the  
20 Trust Fund whether or not any covered work was performed during the work month to be  
21 reported. Highland submitted remittance reports to the Trust Fund for the work it performed  
22 during the months of August through October 2017. However, Highland has not submitted  
23 any remittance reports to the Trust Fund for any work performed on or after November 1,  
24 2017. The lack of remittance reports gives the Trust Fund the reasonable belief that Highland  
25 is attempting to hide covered work or otherwise avoid its obligations under the Labor  
26 Agreement and Trust Agreement.

27           24.     Since November 1, 2017, employees of Highland have performed labor  
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1 covered by the Labor Agreement. However, Highland failed to submit any reports to the  
2 Trust Fund for any work its employees performed since November 1, 2017, as required by  
3 the Labor Agreement and Trust Agreement.

4 25. Highland failed to submit any payment to the Trust Fund for contributions for  
5 any work it performed since August 1, 2017, as required by the Labor Agreement and Trust  
6 Agreement.

7 26. Highland owes the Trust Fund liquidated damages and interest for failing to  
8 timely remit payment of contributions for the covered labor it performed since August 2017.

9 27. The delinquencies asserted herein owed by Highland are properly payable out  
10 of the proceeds of the Bond.

11 28. Highland has established a pattern of regularly submitting monthly  
12 contribution reports and payments late. It has ignored demands from the Trust Fund's  
13 administrator and/or legal counsel and unilaterally decided when to submit the reports and  
14 contributions. The Trust Fund has not approved Highland's actions, either in writing or  
15 otherwise, although it has made reasonable efforts, as appropriate under the circumstances, to  
16 collect such arrears when they have become due. However, to the extent the Trust Fund's  
17 responses to Highland's actions could be interpreted as an "arrangement, agreement or  
18 understanding between a multiple employer plan and [an employer] whose employees are  
19 covered by such plan, whereby the time is extended for the making of a contribution by such  
20 employer to such plan..." (*see* Employee Benefit Plans Class Exemptions from Prohibitions  
21 respecting Certain Transactions in Which Multiemployer and Multiple Employer Plans Are  
22 Involved, 41 FR 12740, 12742 (March 26, 1976)), the Trust Fund files this Complaint not  
23 only to collect the reports and contributions owed, but also to put an end to Highland's  
24 pattern of behavior.

25 29. The Trust Fund has adopted certain policies and procedures related to the  
26 collection of outstanding fringe benefit contributions; namely, The Southern Nevada Painters  
27 and Glaziers Joint Trust Funds Restated Policies, Procedure and Resolutions (effective July  
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1, 2017) (“Policies and Procedures”), which state, inter alia, “Regardless of... any requirement in a Labor Agreement or Trust Agreement, the Trustees have the authority, in their sole discretion, to require Employers to post a surety bond in favor of the Trust Funds or to require higher bond limits based on the past work and financial responsibility of the Employer.” Furthermore, the Labor Agreement states, “...if the required contributions owed by an Employer to any or all of the Trust Funds, are not received by the time, which the Employer is considered delinquent... then the Union may withdraw employees from the job... unless the Employer provides the Trust Funds with a bond for the full amount of delinquency...”

**FIRST CAUSE OF ACTION**

[Breach of Contract – 29 U.S.C. § 1132 – Highland]

30. The Plaintiff herein restates and realleges the above allegations.

31. The failures of Highland to properly and timely report all hours of covered labor performed by its employees and properly and timely pay employee fringe benefit contributions for those hours constitute violations of ERISA and material breaches of the Labor Agreement and Trust Agreement.

32. By failing to remit reports, pay contributions and/or other contract damages when due, Highland is contractually delinquent to the Plaintiff and is obligated by the Labor Agreement, Trust Agreement and ERISA, 29 U.S.C. §§ 1132(g)(2) and 1145, to pay the Plaintiff principal contributions, accrued interest, liquidated damages, audit costs, attorney’s fees and costs, in an amount to be proven at trial.

33. By the Labor Agreement, Trust Agreement and ERISA, 29 U.S.C. §§ 1132(g)(2), Highland agreed to be deemed contractually delinquent if and when it failed to properly report and pay contributions and/or other contract damages when due. Highland is delinquent to the Plaintiff and is obligated by the Labor Agreement and/or Trust Agreement to pay the Plaintiff principal contributions, accrued interest, liquidated damages, attorney’s fees and costs, in an amount to be proven at trial.

1           34.     The Plaintiff is entitled to recover as damages from Highland any and all  
2 unpaid fringe benefit contributions owed to the Plaintiff as well as contract damages, plus  
3 accruing interest, liquidated damages, attorney's fees and costs of suit pursuant to the Labor  
4 Agreement and Trust Agreement.

5           35.     Highland's actions have required the Plaintiff to retain legal counsel to  
6 enforce their rights under the Labor Agreement and Trust Agreement. The Plaintiff is entitled  
7 to recover attorney's fees and costs from Highland.

8           36.     The actions of Highland in failing to timely and properly remit monthly fringe  
9 benefit reports and contributions constitute violations of ERISA [29 U.S.C. § 1001 *et seq.*].  
10 The contract breaches and violations of ERISA identified herein harm the Plaintiff and its  
11 participants because they placed at risk the Plaintiff's ability to provide required benefits to  
12 its beneficiaries. The Plaintiff's remedies at law are not sufficient to adequately compensate  
13 the Trust or its beneficiaries from past harm caused by said violations, or to protect them  
14 from the harm or threat of harm caused by similar future violations. Plaintiff is likely to  
15 prevail on the merits of its claims. Plaintiff is entitled to injunctive relief pursuant to 29  
16 U.S.C. § 1132(a)(3) affirmatively compelling Highland to pay Plaintiff all past-due  
17 contributions and related damages and report and pay Plaintiff all contributions for each hour  
18 of covered labor from this point forward.

19           37.     If the proceeds of the Bond are insufficient to cover the delinquencies  
20 Highland owes to the Plaintiff, Plaintiff is also entitled to injunctive relief pursuant to the  
21 Policies and Procedures and the Labor Agreement to affirmatively compel Highland to post a  
22 surety bond in favor of the Plaintiff for the full amount owed and make a demand for relief  
23 on the bond.

24                                   **SECOND CAUSE OF ACTION**  
25                                   [Violation of ERISA]

26           38.     The Plaintiff herein restates and realleges the above allegations.

27           39.     By failing to accurately report and pay contributions to the Plaintiff in  
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1 accordance with the Labor Agreement and Trust Agreement, Highland has violated Section  
2 515 of ERISA [29 U.S.C. § 1145]. In accordance with the terms of the Labor Agreement and  
3 Trust Agreement, and pursuant to Sections 502(g)(2) and 515 of ERISA [29 U.S.C.  
4 §§1132(g)(2) and 1145], the Plaintiff is entitled to payment of all contributions determined to  
5 be due, as well as liquidated damages, interest, attorneys' fees, costs incurred in enforcing the  
6 terms of the Trust Agreement, and such other legal and equitable relief as the Court deems  
7 appropriate.

8 40. The contract breaches and violations of ERISA identified above harm the  
9 Plaintiff and place at risk the Plaintiff's ability to provide required employee benefits to their  
10 beneficiaries.

11 41. The Plaintiff's remedies at law are not sufficient to adequately compensate the  
12 Plaintiff or its beneficiaries from past harm caused by said violations, or to protect them from  
13 the harm or threat of harm caused by similar future violations.

14 42. The Plaintiff is likely to prevail on the merits of their claims.

15 43. The Plaintiff is entitled to injunctive relief affirmatively compelling Highland  
16 to (i) submit all monthly remittance reports and pay all contribution amounts and related  
17 damages to the Plaintiff in compliance with their obligations under the Labor Agreement and  
18 Trust Agreement; and (ii) post a surety bond in favor of the Plaintiff for the full amount owed  
19 pursuant to the Policies and Procedures and the Labor Agreement and make a demand for  
20 relief on the bond, if the proceeds of the Bond are insufficient to cover the delinquencies  
21 Highland owes to the Plaintiff.

22 **THIRD CAUSE OF ACTION**

23 [Breach of Fiduciary Duty – 29 U.S.C. §§ 1002, 1104, 1109, 1132 – Burt]

24 44. Plaintiff herein restates and realleges the above allegations.

25 45. Burt is responsible for tracking employee hours, preparing and processing  
26 payroll and remittance reports and making contributions and payments to the Trust Fund for  
27 each hour of covered labor performed by Highland's employees.

1           46.     Contributions owed to the Plaintiff became assets of the Plaintiff on the date  
2 that they became due.

3           47.     Burt made determinations as to how funds owed to the Plaintiff were to be  
4 handled, utilized, segregated, distributed, and/or paid.

5           48.     Burt exercised authority and control relating to the management or disposition  
6 of the Plaintiff's assets established pursuant to the terms and provisions of the Labor  
7 Agreement, Trust Agreement, governing plan documents, 29 C.F.R. § 2510.3-102 and 29  
8 U.S.C. §§ 1002, 1104, 1109 & 1132.

9           49.     Burt is a fiduciary to the Plaintiff for purposes of ERISA.

10          50.     The actions of Burt in failing to segregate trust fund assets from Highland's  
11 assets and make required contributions to the Plaintiff materially harmed the Plaintiff, placed  
12 the beneficiaries of the Plaintiff at risk with regard to their benefits and constitute a breach of  
13 their fiduciary duties to the Plaintiff and the Plaintiff's beneficiaries.

14          51.     The Plaintiff is entitled to recover from Burt a sum equal to all unpaid fringe  
15 benefit contributions, plus accrued interest, liquidated damages, attorney's fees and audit  
16 costs, in an amount to be established by proof at trial.

17                           **FOURTH CAUSE OF ACTION**  
18                           **[Demand for Relief on Bond]**

19          52.     Plaintiff herein restates and realleges the above allegations.

20          53.     ACIC issued the Bond as a condition for Highland to maintain its Contractor's  
21 License.

22          54.     The Plaintiff is an intended third-party beneficiary under the Bond.

23          55.     The delinquencies asserted herein owed by Highland are properly payable out  
24 of the proceeds of the Bond.

25          56.     The proceeds of the Bond must be paid to the Plaintiff in full or partial  
26 satisfaction, as the case may be, of Highland's obligations owed to the Plaintiff or as  
27 damages caused by Highland's failure to properly act in accordance with the Labor  
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1 Agreement, Trust Agreement and/or the law, subject only to the penal limit on the Bond  
2 and/or the statutory limits on payment of fringe benefit contributions from the Bond.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, the Plaintiff prays for Judgment against the Defendants, and each of  
5 them, as follows:

6 1. For the Court's Order enjoining the Defendants from failing to timely pay to  
7 the Plaintiff delinquent amounts owed to the Plaintiff;

8 2. For the Court's Order compelling the Defendants to deliver to the Plaintiff  
9 monthly remittance reports detailing all covered work performed between November 1, 2017  
10 and the date of the filing of this Complaint;

11 3. For the Court's Order affirmatively compelling the Defendants to abide by the  
12 terms of the Labor Agreement from this point forward, including, but not limited to,  
13 submitting and paying accurate monthly contribution remittance reports and contribution  
14 amounts to the Plaintiff on a timely basis;

15 4. For the Court's Order enjoining the Defendants from failing to timely pay the  
16 Plaintiff future contribution amounts, as they become due;

17 5. For unpaid fringe benefits contributions in amounts to be proven at trial;

18 6. For damages for breach of contract, violation of ERISA and/or breach of  
19 fiduciary duty in an amount to be proven at trial;

20 7. For liquidated damages in amounts to be proven at trial;

21 8. For accrued interest on all unpaid contributions and damages from their due  
22 dates until paid;

23 9. For Plaintiff's reasonable attorney's fees for having to bring this action to  
24 compel reporting compliance and contribution recovery with associated damages;

25 10. For Plaintiff's costs of suit incurred herein;

26 11. For the Court's Order affirmatively compelling Highland to post a surety bond  
27 in favor of the Plaintiff, if the proceeds of the Bond are insufficient to cover the full amount  
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1 of contributions, liquidated damages, interest and attorney's fees and costs owed to Plaintiff  
2 by Highland;

3 12. For such additional relief as may be provided for by 29 U.S.C. § 1132; and

4 13. For such additional relief as this Court may deem just and proper.

5 DATED this 10th day of January, 2018.

6 CHRISTENSEN JAMES & MARTIN, CHTD.

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